

BEFORE THE

# Federal Communications Commission RECEIVED

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of  
MILFORD BROADCASTING CO.  
SHARON A. MAYER  
For Construction Permit  
for a new FM Station on  
Channel 271C2  
Milford, Iowa

) MM Docket No. 92-317  
)  
) File No. BPH-911003MI  
)  
) File No. BPH-911004MG  
)  
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)  
)  
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To: Honorable Edward Luton  
Administrative Law Judge

## MOTION TO ENLARGE ISSUES

Sharon A. Mayer ("Mayer"), by her attorneys and pursuant to Section 1.229 of the Rules, hereby requests that the issues specified in this proceeding be enlarged against Milford Broadcasting Co. ("MBC") as follows.<sup>1</sup>

To determine whether MBC has maintained its public inspection file in accordance with Rule 73.3526 and, in light of the evidence adduced, the effect on the applicant's comparative qualifications to be a Commission licensee.

To determine whether MBC and Kevin Galbraith engaged in intimidation and false representations to discourage Sharon Mayer from proceeding with her application; and, if so, to determine the effect thereof on the comparative qualifications of MBC to be a Commission licensee.

<sup>1</sup> This Motion is timely filed within thirty days of the release of the Hearing Designation Order, DA92-1755, on January 29, 1993.

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MBC Failed to Comply With  
The Requirements of Rule 73.3526

1. Section 73.3526 of the Rules provides that an applicant for a construction permit for a new broadcast station must maintain a local public inspection file containing a copy of the application, amendments thereto and other related materials. 47 USC §§73-3526(a) and (a)(1). The file must be maintained at an accessible place in the community to which the station is proposed to be licensed and must be available for public inspection at anytime during regular business hours. 47 USC §73.3526(d). MBC did not comply with this Rule for a significant period of time.

2. The attached Affidavit of Gloria J. Fitzpatrick, Branch Manager of Northwest Federal Savings Bank, Milford, Iowa, states that she is in charge of the MBC public file which was received in the Bank's Milford office in October, 1991 after a telephone call from Mr. Kevin Galbraith, the President of MBC. Ms. Fitzpatrick further states that Mr. Galbraith removed the MBC public file from the Bank in December, 1991 and that it was not returned to the Bank until the first week in March, 1992 when it was received by ordinary mail from Paoli, Pennsylvania where Mr. Galbraith resides.<sup>2</sup> The MBC public file was thus not available to the public for a minimum of two of the five months following the filing of the application solely because of Mr. Galbraith's voluntary act of removing the file from the Bank. Moreover, the file was not available during the two-month period immediately prior to the date

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<sup>2</sup> See Application of MBC, Section II, Item 6.

for filing amendments as a matter of right under Rule 73.3522(a)(6).<sup>3</sup> The attached Declaration of Sharon A. Mayer confirms that when she visited the Bank on March 3, 1992 to inspect the MBC public file, the file was not yet available.

3. The absence of a local public file from its represented location is considered a serious issue. For example, a public inspection file issue has been added in cases where the file was not available for one week, United Broadcasting Co., 58 FCC 2d 1346, 36 RR2d 1556, 1574 (Rev. Bd. 1976), and for five months. Teche Broadcasting Corp., 56 FCC 2d 257, 35 RRd 487, 494 (Rev. Bd. 1975). In United Broadcasting Co. the public file was apparently "out of place" in a library while in Teche Broadcasting Corp. there was no indication that the applicant was aware of the removal of its application by its local counsel. Still, the issue was added. Under the present circumstances, where the MBC public file was voluntarily removed from its location for at least two months by its President and then principal stockholder,<sup>4</sup> in clear violation of the dictates of Section 73.3526, this affirmative act, which is substantially more flagrant than the circumstances set forth in United Broadcasting Corp. and Teche Broadcasting Corp., warrants addition of the requested issue.

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<sup>3</sup> The MBC application was placed on Public Notice as being accepted for tender on January 30, 1992. See Report No. 15183. Thus, amendments could be filed as a matter of right for 30 days thereafter. MBC filed its amendment on February 28, 1992.

<sup>4</sup> Mr. Galbraith initially held 51% of the voting stock of MBC. See Application of MBC, Section II, Item 6.

Kevin Galbraith's Attempt to Intimidate Sharon Mayer  
Constitutes an Abuse of Process

4. Further evidence of Mr. Galbraith's lack of appreciation for and compliance with the Commission's processes can be found in the attached Declaration of Sharon Mayer. At her meeting with Mr. Galbraith on December 30, 1991, Mr. Galbraith used intimidation in an effort to influence Mayer to give up her Milford application. His threat that he already had the FBI investigating her clearly exceeds the boundaries of what might be termed negotiation and enters the realm of intimidation and false pretense. His ready willingness to use this false tactic is predictive of his behavior as a licensee and requires the addition of an abuse of process issue in this proceeding.

5. The Commission has made clear that "such misconduct as . . . harassment of opposing parties, which threatens the integrity of the Commission's licensing processes, will . . . continue to be considered as bearing on character." Character Qualifications, 102 FCC 2d 1179, 1211 (1986). This type of misbehavior is termed abuse of process. Id. at 1211. In Town and Country Radio Inc., 51 FCC 2d 1217, 33 RR2d 671, 673 (Rev. Bd. 1975), a station manager's statements to public file visitors that FBI files were being checked on them, among other threats, raised a serious question as to whether the licensee sought to harass, intimidate or otherwise discourage the public from inspecting station files. Id. at 674.

6. In WI00, Inc., 28 RR2d 685, 689 (Rev. Bd. 1973), the Review Board held that any "attempt by a competing applicant to subvert or obstruct the prosecution of another application deprives

the Commission of a real and meaningful choice between competing applicants, severely abuses the Commission's comparative hearing process and cannot be condoned." See also James C. Sliger, 69 FCC 2d 277, 41 RR2d 1541, 1547 (Rev. Bd. 1977) and cases cited therein.

7. As a new applicant and one unfamiliar with the comparative process, Mayer was clearly the subject of intimidation by Mr. Galbraith who was a stranger to her. His attempt to get her to discontinue her involvement in this proceeding must not be condoned but should be recognized for what it was, a false and intimidating representation. In consequence, there is a sound factual basis for adding the requested issue.

#### Discovery

8. In the event the requested issues are added to this proceeding, Mayer requests that she be permitted to depose Kevin Galbraith with respect to the specified issues at a time and place to be mutually agreed upon by the parties.

WHEREFORE, it is respectfully requested that this proceeding be enlarged by specification of the issues enumerated above.

Respectfully submitted,

SHARON A. MAYER

By: 

Richard F. Swift  
Her Attorney

TIERNEY & SWIFT  
1200 18th Street, N.W.  
Suite 210  
Washington, D.C. 20036  
(202) 293-7979  
March 1, 1993

**DECLARATION OF GLORIA J. FITZPATRICK**

**AFFIDAVIT**

STATE OF IOWA               :  
                              :  
                              :     ss.  
DICKINSON COUNTY         :

I Gloria J. Fitzpatrick, after first being duly sworn, do depose and state as follows:

1. I am the Branch Manager of Northwest Federal Savings Bank, Milford, Iowa.

2. As Branch Manager, I am in charge of the Milford Broadcasting Company Public File.

3. The Milford Broadcasting Company Public File was received in the Northwest Federal Savings Bank office in Milford, Iowa in October 1991, after a telephone call from Kevin Galbraith, who at that time was president of the Milford Broadcasting Company.

4. Kevin Galbraith removed the Milford Broadcasting Company Public File from Northwest Federal Savings Bank in Milford, Iowa in December 1991.

5. The Milford Broadcasting Company Public File was returned by ordinary mail to Northwest Federal Savings Bank in Milford, Iowa during the week of March 1, 1992 from Kevin Galbraith, 15 Horseshoe Lane, Paoli, Pennsylvania 19301.

6. During the month of March 1992 by reason of an amendment made to the Milford Broadcasting Company Public File, David Potratz was named president of Milford Broadcasting Company, and Sharyl Potratz was named vice president and secretary of Milford Broadcasting Company.

7. I have never seen or talked to David Potratz or Sharyl Potratz.

8. The following is a list of what is in the Milford Broadcasting Company Public File as of the date of this affidavit:

Original Application.

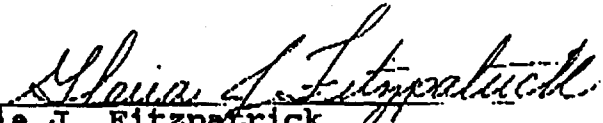
Introductory letter dated October 10, 1991.

Copy of October 3, 1991 Public Notice.

Amendment to Milford Broadcasting Company Public File  
dated February 28, 1992.

All as I verily believe.

Dated this 1 day of ~~February~~<sup>MARCH</sup>, 1993.

  
Gloria J. Fitzpatrick

Subscribed and sworn to before me by the said Gloria J.  
Fitzpatrick on this 1 day of ~~February~~<sup>MARCH</sup>, 1993.



  
NOTARY PUBLIC - STATE OF IOWA

(Ms. Fitzpatrick's original affidavit will be filed as soon as it is  
received by counsel)



**DECLARATIONS OF SHARON A. MAYER**

DECLARATION

I, Sharon A. Mayer, hereby state as follows;

I am an applicant for a new FM radio station on channel 271C2 at Milford, Iowa.

On the morning of March 3, 1992, I went into Northwest Federal Savings Bank, Milford, Iowa to look at Milford Broadcasting Company's public file and any amendments to it if any. Gloria Fitzpatrick told me that the file was not there and that it had been picked up in December. There was nothing there for me to look at. I signed the log sheet for the public file and left.

I declare under penalty of perjury that the foregoing statement is true and correct.

Date 3-1-93

Sharon A. Mayer  
Sharon A. Mayer

(Ms. Mayer's original affidavit will be filed as soon as it received by counsel)

# DECLARATION

I, Sharon A. Mayer, hereby state as follows;

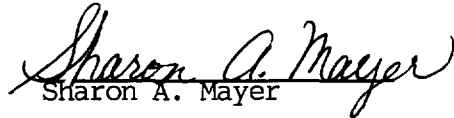
I am an applicant for a new FM radio station on channel 271C2 at Milford, Iowa.

On December 29, 1991, Mr. Kevin Galbraith, who is a principal in Milford Broadcasting Co., an applicant for the same Milford radio station, called me at my home. I returned his call at his parents house at which time he stated he wanted to meet me and discuss the proposed Milford radio station. We agreed to meet at the Picadilly Restaurant in Milford on Monday afternoon, December 30, 1991. At this meeting, Mr. Galbraith described his efforts in getting the station to Milford, stated that he had not expected a local person to apply, asked how I heard about the station and why I had applied. He strongly expressed his view that he should get the station because of the work he had done on it and told me about the application process and how expensive it was. I told him that with respect to the expense, I expected that and had budgeted for it and had spent a great deal of time and effort on my application.

After discussing our family ties to the area, he asked if I was going to continue on with the process and that now was the time to negotiate. I told him it was too early in the process for me to decide not to proceed. Near the end of our conversation, he told me that he already had the FBI checking me out. I had not expected such a statement, was surprised by it and remarked "oh really". I did not discuss his warning further with him, but remained concerned about what he said because I had never met this man before. I did not know whether he could request the FBI to do that or not. I didn't know whether he was telling the truth. I looked upon it as an attempt to intimidate me in order to get me to give up my efforts to build a radio station in Milford.

I declare under penalty of perjury that the foregoing statement is true and correct.

Date; 2-26-93

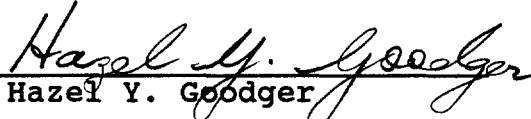
  
Sharon A. Mayer

CERTIFICATE OF SERVICE

I, Hazel Y. Goodger, Secretary in the law firm of Tierney & Swift, hereby certify that I have on this 1st day of March, 1993, sent copies of the foregoing "Motion To Enlarge Issues" to the following:

- \* The Honorable Edward Luton  
Administrative Law Judge  
Office of Administrative Law Judges  
Federal Communications Commission  
2000 L Street, N.W., Room 223  
Washington, D.C. 20554
  
- \* Paulette Laden, Esquire  
Hearing Branch, Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
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- \* Chief, Data Management Staff  
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Washington, D.C. 20006  
Counsel for Milford Broadcasting Company

  
Hazel Y. Goodger

\* Hand Delivery